IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 12544 of 1999

Between:

T.Vasantha Rao, S/o Rama Rao, aged 62 years,
P.C.No.837/AN (Retired), Dist Armed Reserve, Anantapur,
Anantapur District.

.....PETITIONER

AND

1. The Deputy Inspector General of Police ,
   Anantapur Range, Anantapur Dist.

2. The Director General and Inspector General of Police ,
   Andhra Pradesh, Hyderabad.

3. The Superintendent of Police,
   Anantapur, Anantapur District.

4. The Chairman/Registrar,
   A.P.Administrative Tribunal, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order, or direction, more particularly one in the nature of writ of

MANDAMUS setting aside the order of Honourable A.P. Administrative Tribunal in O.A.No.6801 /1992 ,dated 18/4/1995 as being contrary to FR-54-A(3) and against principles of natural justice and consequently pay the petitioner's all amounts due at that rate after deducting the amounts already paid for that period and also accordingly fix the 10(ten) years Special Grade Post from 4/7/1974 including benefits arising out 15 years /22years of services, in the interest of justice and pass such other order.

Counsel for the Petitioner: MR.M.RATNA REDDY (Amicus Curiae)
Counsel for the Respondents: GP FOR SERVICES II

The Court made the following:

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ORDER: (Per Sri G.B,J)

The writ petition is filed assailing the order dated 18.04.1995 passed by the A.P. Administrative Tribunal in O.A.6801 of 1992.

2. The petitioner, while working as constable in Armed Reserve, dismissed from service for misconduct. However, the Appellate Authority converted the dismissal into compulsory retirement. Therefore, he filed R.P.No.154 of 1984 before the A.P. Administrative Tribunal challenging the said compulsory retirement. However, the Tribunal, by an order dated 12.03.1986 directed the Government to review the order of punishment. Accordingly, the order of punishment was reviewed by the Deputy Inspector General of Police and passed an order dated 14.7.1986 setting aside the punishment of compulsory retirement and modified the punishment to that of reduction of pay by six stages in the time scale for a period of three years with effect on future increments and pension. Accordingly, the petitioner was reinstated into service treating the period of his out of employment as 'not on duty'. Consequently, another proceedings came to be issued on 19.05.1990 purported under F.R. 54(4) which leads to the effect that the petitioner shall be paid pay and allowances at the rates for which he would have been eligible, but for his dismissal from service, restricting the same to 3 years. The said order came to be challenged by the petitioner in this writ petition.

3. Sri M.Ratna Reddy was requested to assist the court as Amicus Curiae.

4. Learned Counsel for the petitioner would now submit that the order passed by the Authorities treating the period spent from the date of suspension to the date of reinstatement is 'not on duty' is illegal and contrary to law. He submits that F.R. 54(3) is applicable, whereas the period of absence was treated under F.R. 54(4), which is irregular and contrary to the facts of the present case. The learned counsel, however, submits that treating the period as 'not on duty' is denied the benefit of automatic advancement scheme and that since the employee is already retired from service he may be directed to be released this with retrospective effect.

5. The learned Government Pleader submits that the order of Tribunal suffers from

illegality and irregularity as the period of absence was treated in accordance with F.R. 54(4) and the petitioner was already granted pay and allowances restricting the same for a period of 3 years and thus he is not entitled for any further benefits.

6. Here, a very small question arising for consideration is applicability of Fundamental Rule 54 (A). Admittedly, in the instant case, on the directions of the Tribunal, the competent Authority reviewed the order of compulsory retirement and reduced punishment to that of reduction of pay by 6 stages in the time scale for a period of 3 years having cumulative effect and the period between removal and reinstatement was treated as 'not on duty'. The question for consideration is whether the order of treating the period, during which the petitioner was out of employment due to compulsory retirement, as 'not on duty' is a punishment. The learned counsel for the petitioner, however, submits that the petitioner cannot be given dual punishment to that of reduction in the pay by 6 stages and also treating the period as 'not on duty'. This contention appears to be not correct, as treating the period of absence is not a punishment by itself. It is only to get continuity of service that would be counted for at the time of retirement or termination of the service, as the case may be, and the power is vested with the Authorities to treat the same as 'on duty' or 'not on duty' and the Authorities have exercised that power. The Tribunal rightly refused to interfere with the order of the Authorities.

7. Accordingly, we do not find any ground to interfere with the order impugned. But, however, the learned counsel would submit that the order of automatic advancement is not released on the ground that the period was treated as 'not on duty'. But this contention cannot be accepted. It is for the Authorities to consider the same keeping in view the relevant provisions. Therefore, we leave it open to the petitioner to prefer an appropriate revision in this regard, which may be considered according to the Rules.

8. Subject to above observations the writ petition is dismissed. We place on record valuable assistance given to this Court by Sri M.Ratna Reddy in disposing of this case.

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(G.BIKSHAPATHY,J)

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(P.S.NARAYANA,J)

Date: 13th December 2004.

*BSB/ChV

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Deputy Inspector General of Police ,
   Anantapur Range, Anantapur Dist.

2. The Director General and Inspector General of Police ,
   Andhra Pradesh, Hyderabad.

3. The Superintendent of Police,
   Anantapur, Anantapur District.

4. The Chairman/Registrar,
   A.P.Administrative Tribunal, Hyderabad.

5. Two CCs to the Government Pleader for Services-II,

High Court Buildings, Hyderabad (OUT).

6. Two CD copies